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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,748	09/18/2003	William T. Wilkinson	WIL-118US	6982
31344	7590	10/06/2005	EXAMINER	
RATNERPRESTIA P.O. BOX 1596 WILMINGTON, DE 19899			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

*He*

**Office Action Summary**

Application No.

10/665,748

Applicant(s)

WILKINSON, WILLIAM T.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 15,27-35,37-41 and 49-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-26, 36 and 42-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/18/03</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Applicant's election without traverse of Group I, Species I, and Sub-Species A in the reply filed on July 11, 2005 is acknowledged.

Claims 15, 27-35, 37-41, 49-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species and Sub-Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2005.

Contrary to the Applicant's argument, claims 49-50 are drawn to non-elected Species III wherein one of the sections is generally oblong in shape and narrower on opposite ends and wider in a middle region as clearly shown in figure 3. Therefore, claims 49-50 are withdrawn from consideration.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hand pump must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant by the Applicant's recitation "a non-remote individually adjustable mechanism" thus the claim is confusing and indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No 5,279,310 to Hsien.

Claim 36, Hsien discloses a system for adjustably positioning a head/neck body zone, hip/lower back body zone of a person, the system comprising;

a first inflatable pillow (10, 17) for supporting the head/neck body zone;

a second inflatable pillow (20,25), and

a third inflatable pillow (30,33), and each pillow comprising an inflatable bladder (17,25,33) positioned between an upper non-adjustable cushioned element and a lower non-adjustable cushioned element. With regards to the Applicant's recitation "for adjustably positioning an upper arm/shoulder body zone and for supporting a top arm in the upper arm body zone" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex pade Masham, 2 USPQZd 1647 (1987).

Claim 43, Hsien discloses a system for positioning at least two body zones of a person relative to a base surface on which the person is resting, the system comprising

at least two discrete supports (10,20) each support having a different thickness. With regards to the Applicant's recitation non-adjustable and non-connected, the supports are inherently capable of not being adjusted or connected to one another once the user has achieved a desired firmness and keeps the supports spaced apart from one another.

Claim 44, wherein one of the at least two body zones comprises an upper body.

Claim 45, wherein the system comprises a first discrete support for supporting the upper body zone, a second discrete support for supporting the head/neck body zone, and a third discrete support 30. With regards to Applicant's recitation "for support the upper arm" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claims 1-4, 12-14, 16-19, 25, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No 5,497,519 to Mintz.

Claims 1 and 12, Mintz discloses a system for adjustably positioning at least two body zones of a person relative to a base surface on which the person is resting, the system comprising at least two adjustable sections (col. 6 lines 56-60), each adjustable section having a non-remote, individually adjustable mechanism such as an inflatable bladder for adjusting the elevation of the section, wherein one body zone is a head/neck body zone, wherein no more than one adjustable section per body zone. With regards to

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Applicant's recitation for support the upper arm it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex pade Masham, 2 USPQZd 1647 (1987).

Claim 2, wherein each adjustable section is pneumatic.

Claim 3, wherein each of the at least two adjustable sections comprises an adjustable member positioned between an upper non-adjustable cushioned element and a lower non-adjustable cushioned element.

Claim 4, wherein the adjustable member comprises an inflatable bladder.

Claim 13, wherein each of the at least two sections comprises an individual module.

Claim 14, wherein each of the at least two sections comprises an adjustable pillow or a section thereof.

Claim 16, comprising a plurality of pillows, one pillow for each body zone.

Claim 17, wherein the system provides customized spinal alignment for the Person.

Claim 18, wherein each section is adjustable to provide an elevation relative to the base surface sufficient to position the respective body zone in a physiologically neutral position.

Claim 19, wherein the physiologically neutral position is a position that optimally minimizes pressure points and musculoskeletal stress

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Claim 25, wherein the system is adapted to support the at least two body zones of the person while the person is resting on his or her side.

Claim 36, Mintz discloses a system for adjustably positioning a head/neck body zone, hip/lower back body zone of a person, the system

comprising;

a first inflatable pillow for supporting the head/neck body zone;

a second inflatable pillow, and

a third inflatable pillow, and each pillow comprising an inflatable bladder

positioned between an upper non-adjustable cushioned element and a lower

non-adjustable cushioned element (col. 3 lines 39-55)(fig. 4). With regards to the

Applicant's recitation "for adjustably positioning an upper arm/shoulder body zone and for supporting a top arm in the upper arm body zone" it has been held that a recitation

with respect to the manner in which a claimed apparatus is intended to be employed

does not differentiate the claimed apparatus from a prior art apparatus satisfying the

claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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Claims 1-6, 12-14, 16-21, 24-26, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,279,310 to Hsien in view of U.S. Pat. No. 4,669,455 to Bellati.

Claims 1 and 12, Hsien discloses a system for adjustably positioning at least two body zones of a person relative to a base surface on which the person is resting, the system comprising at least two adjustable sections (10,20,30), each adjustable section having a non-remote, individually adjustable mechanism (17,25,33) for adjusting the elevation of the section, wherein one body zone is a back zone 20 or a head/neck body zone 10.

Hsien fails to disclose no more than one adjustable section per body zone. Bellati discloses a support having chambers 30 and a channel 20 defining just one unitary inflatable structure. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a unitary singular adjustable section as taught by Bellati in order to provide an improved tractor which inflates to bear at spaced locations per body zone of Hsien. With regards to Applicant's recitation for support the upper arm it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim 2, wherein each adjustable section is pneumatic.

Claim 3, wherein each of the at least two adjustable sections (17,25,33) comprises an adjustable member positioned between an upper non-adjustable cushioned element and a lower non-adjustable cushioned element.

Claim 4, wherein the adjustable member comprises an inflatable bladder.

Claim 5, wherein the non-remote, individually adjustable mechanism comprises a valve mounted on an outer surface of the inflatable bladder (fig. 3).

Claims 6 and 20, Hsien discloses all of the Applicant's claimed limitations except for having a length of extension tubing. Bellati discloses a support having a length of extension tubing 4 attached to a valve 6, the extension tubing adapted to interface with a pump 5. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a length of extension tubing and pump as taught by Bellati in order to supply air pressure to the inflatable bladders of Hsien.

Claim 13, wherein each of the at least two sections comprises an individual module.

Claim 14, wherein each of the at least two sections comprises an adjustable pillow or a section thereof.

Claim 16, comprising a plurality of pillows, one pillow for each body zone.

Claim 17, wherein the system provides customized spinal alignment for the Person.

Claim 18, wherein each section is adjustable to provide an elevation relative to the base surface sufficient to position the respective body zone in a physiologically neutral position.

Claim 19, wherein the physiologically neutral position is a position that optimally minimizes pressure points and musculoskeletal stress.

Claims 21 and 24, wherein each of the at least two sections are attachable and detachable to one another via hook and loop fasteners (18,21).

Claim 25, with regards to the Applicant's recitation "the system is adapted to support the at least two body zones of the person while the person is resting on his or her side" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Ex parte Masham, 2 USPQZd 1647 (1987).

Claim 26, wherein the system is adapted to support the at least two body zones of the person while the person is resting on his or her back zone 20 and another of the at least two body zones is a head/neck body zone 10. With regards to Applicant's recitation for support the upper arm it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQZd 1647 (1987).

Claim 46, wherein one of the at least two adjustable sections has a maximum elevation that is greater than a maximum elevation of another of the adjustable sections (fig. 5).

Claim 47, wherein the system comprises three adjustable sections, an upper body section 20, a head/neck section 10 for positioning a head/neck body zone, and a lower body section 30 for positioning a thigh/upper leg/hip/lower back body zone, in which the maximum elevation of each adjustable section is different from the maximum elevation of each of the other two adjustable sections (fig. 5). With regards to Applicant's

recitation for support the upper arm it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim 48, wherein the head/neck section has a lowest maximum elevation of the three adjustable sections, the upper body section is capable of having a greater maximum elevation of the three adjustable sections, and the lower body section is capable of having an elevation intermediate the maximum elevations of the head/neck section and the upper body section.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,279,310 to Hsien in view of U.S. Pat. No. 6,189, 168 to Graebe.

Claim 42, Hsien discloses all of the Applicant's claimed limitations except for the pillow case comprising moisture-wicking fabric. Graebe disclose a pillowcase 12, the pillowcase comprising a moisture-wicking fabric (col. 4 lines 39-41). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a moisture wicking fabric as taught by Graebe in order to promote the maximum breathability, moisture removal, and comfort for the user of the support of Hsien.

Claims 7-11 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,279,310 to Hsien in view of U.S. Pat. No. 4,669,455 to Bellati, and further in view of U.S. Pat. No. 6, 189,168 to Graebe.

Claim 7, Hsien, as modified, discloses all of the Applicant's claimed limitations except for having an outer enclosure comprising a pocket and opening. Graebe discloses a support having an outer enclosure 12 comprising a pocket having an opening 24, the outer enclosure adapted to surround a upper non-adjustable cushioned element 28, the lower non-adjustable cushioned element 28, and the inflatable bladder. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an outer enclosure as taught by Graebe in order to provide a maximum comfort for the user.

Claim 8, wherein the outer enclosure 12, the upper non-adjustable cushioned element 28, and the lower non-adjustable cushioned element comprise an integral unit (Graebe).

Claim 9, wherein the integral unit comprises a fabric comprising non-adjustable cushioned material 28 bonded between the outer enclosure and an inner lining, the fabric formed into a pocket to receive the inflatable bladder (Graebe).

Claim 10, further comprising a fastener 38 for closing the opening.

Claim 11, wherein fastener for closing the opening is a zipper.

Claims 22-23, Hsien, as modified, discloses all of the Applicant's claimed limitations except for having an outer casing comprising a fabric. Graebe discloses a support having at least one outer casing 12 for covering the system or a portion thereof and providing a contact surface for contact with the person, the casing comprising a fabric that is moisture-wicking, heat-normalizing, or a combination thereof (col. 4 lines 39-41).

It would have been obvious to one having ordinary skill in the art at the time of the

invention to employ an outer enclosure as taught by Graebe in order to provide a maximum comfort for the user.

***Response to Arguments***

Applicant's arguments filed 3/11/05 have been fully considered but they are not persuasive.

With regards to Applicant's recitation for support the upper arm it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). The Applicant relies on broad claim limitations that merely recite "the system comprising at least two adjustable sections" and fails to structurally differentiate the claimed invention from the two adjustable sections taught by Hsien. Since the adjustable sections of Hsien meet the broad structural limitations as recited at least one section is inherently capable of supporting the arms of a user when the support for the back is significantly wider than width the person.

With regards to claim 36, the Applicant's recitation "during rest on the person's side" is drawn to how the apparatus is being employed and, as stated above, a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the system of Hsien satisfying the claimed structural limitations.

With regards to claim 43, the Applicant's recitation non-adjustable and non-connected, the supports are inherently capable of not being adjusted or connected to

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one another once the user has achieved a desired firmness and keeps the supports spaced apart from one another.

Applicant's arguments with respect to claims 1, 6-11, 20, 22-23, and 31-35 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **FREDRICK C. CONLEY** whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FG  




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